In my view the learned district judge was wrong in taking into account materials which, though placed before him, had nothing to do with the charge. It seems to me that he had decided to impose a deterrent sentence because of factors extraneous to the charge.

There were good mitigating factors in this case, ie full restitution was made to OHPL; appellant had pleaded guilty to the charge; prosecution's costs had been paid; and a full and final settlement of all outstanding matters with Pan-El and its subsidiaries and affiliates had also been effected. Further, I note that the prosecution did not press for a deterrent sentence but left it to the court. In this regard I was reminded of the view expressed by the Court of Appeal in Brunei in *Khoo Ban Hock* v *PP*[3] that the discount for a plea of guilt should be substantial. Considering all these, I am of the view that a sentence of two years' imprisonment in the circumstances of the present case is manifestly excessive though I am also of the opinion that a fine would be quite inadequate. A custodial sentence is called for. I would accordingly reduce the prison term from two years' to one year.

Turning to the second ground of appeal, ie that the present term of imprisonment should run from the date of conviction rather than from the expiry of the eight-year imprisonment term which the appellant is now serving, s 234 of the Criminal Procedure Code provides that:–

> When a person who ... is undergoing a sentence of imprisonment is sentenced to imprisonment the latter sentence of imprisonment shall commence either immediately or at the expiration of the imprisonment to which he was previously sentenced as the court awarding the sentence directs.

This section clearly gives a discretion to the court. Of course, this discretion should be exercised judiciously.

In determining this question, counsel for the appellant urged me to place myself in the shoes of the senior district judge and consider whether, if this charge were dealt together with the earlier 36 charges on forgery, would the senior district judge have imposed this sentence to run consecutive to the eight-year term. Having regard to all the circumstances as a whole, I am satisfied that there is more than an even chance that the senior district judge might, considering the reasons which he gave when sentencing the appellant to the eight-year term, very well have ordered that this sentence should run consecutive to the eight-year term. The case *Elsie Florence Carey Albert Ames*[4] is clearly distinguishable. There the subsequent charge was similar to the earlier charge which is not so in our present case. In any event, looking at the facts of this case as well as those relating to the 36 forgery charges, I do not think it was wrong of the learned district judge to order that the present term should only take effect after the expiry of the eight-year term. Accordingly, I would not disturb the exercise of the district judge's discretion.

In the result this appeal is allowed to the extent that the sentence is reduced to one-year imprisonment. As ordered by the learned district judge, it shall take effect after the appellant has served his present term.

Order accordingly.

Solicitors: *Toh Tan & Partners.*

Reported by *Terence Tan Bian Chye*

Societe Generale v Good Property Land Development Pte Ltd (No 2)

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1151 OF 1988
CHAN SEK KEONG J
28 JANUARY 1989

Land Law – Statutory power of sale under Conveyancing and Law of Property Act – Whether applicable to unregistered mortgage of registered land under Land Titles Act – Conveyancing and Law of Property Act (Cap 61, 1985 Ed), s 24 – Land Titles Act (Cap 157, 1985 Ed), s 64

This case had been reported in [1988] 2 MLJ 24. After the court had delivered its grounds of decision, counsel for the defendants sought leave to make a further submission on a point of law, which was granted by the court. The defendants' submission was that the statutory power of sale in s 24 of the Conveyancing and Law of Property Act ('the CLP') was not available to the plaintiffs as they did not have a registered mortgage under the LTA.

Held, rejecting the defendants' further argument:

(1) The incorporation by reference of Part IV of the CLP as part of the LTA does not imply that the provisions of Part IV are inconsistent with the LTA; nor does such incorporation affect its separate existence as a statute of general application except to the extent that it is inconsistent with the LTA in regard to registered land.

(2) Since the LTA has nothing to say in relation to unregistrable mortgages of registered land except that it provides a means of protecting such interests by caveats the question of whether such mortgagees have the statutory powers of mortgagees of non-registered land is left to the general law to determine.

(3) In the court's view, s 24 of the CLP confers on any mortgagee, whose mortgage is made by deed, a statutory power of sale exercisable in the manner provided in s 25. In this case, the defendants' mortgage is made by deed.

Legislation referred to

Conveyancing and Law of Property Act (Cap 61, 1985 Ed) ss 24, 25(b)
Land Titles Act (Cap 157, 1985 Ed) ss 3(1), (3), 55(4), 64

Molly Lim (Ms) for the plaintiffs.
Manjit Singh for the defendants.

Cur Adv Vult

Chan Sek Keong J: Immediately upon receiving the grounds of decision in these proceedings, counsel for defendants sought leave to make a further submission on a point of law. As the point was of sufficient importance, I granted leave without objection from counsel for the plaintiffs.

It should be recalled that the plaintiffs' mortgage was only provisionally registered and was therefore not a registered mortgage for the purposes of the Land Titles Act ('the LTA'). The submission was that the statutory power of sale in s 23 of the Conveyancing and Law of Property Act ('the CLP') was not available to the plaintiffs as they did not have a registered mortgage under the LTA. Section 64 of the LTA provides as follows:

> (1) The provisions of Part IV of the Conveyancing and Law of Property Act shall apply mutatis mutandis to mortgages and charges registered under the provisions of this Act.
>
> (2) In every mortgage of registered land (unless a contrary intention is expressed) there shall be deemed to be included the covenant and proviso implied by section 31 of the Conveyancing and Law of Property Act.
>
> (3) For the purposes of this section, and without in any way limiting its generality, unless the context or subject-matter otherwise indicates or requires, where used in the Conveyancing and Law of Property Act –
>
> 'conveyance' includes an instrument of transfer of registered land;
> 'deed' includes any instrument registered under this Act;
> 'mortgage' includes mortgages and charges registered under this Act, and
> 'mortgagor' and 'mortgagee' have corresponding meanings; and
> 'reconveyance' includes a discharge in the form prescribed by this Act.
>
> (4) To the extent to which any provision of the Conveyancing and Law of Property Act is inconsistent with a provision of this Act the latter prevails.

It was contended that as the plaintiffs' mortgage was not registered under the LTA the provisions of Part IV of the CLP had no application and therefore the plaintiffs could not rely on s 25(2) of the CLP in order to exercise their power of sale on the ground that there was some interest in arrears for a period exceeding one month. The argument is plausible. It is predicated on the assumption that the CLP has no application to registered land at all and that therefore it is necessary to re-enact Part IV of the CLP as part of the LTA in order to give to mortgagees of registered land the powers that were given to mortgagees of non-registered land. But I do not think the argument is correct for the following reasons: first, s 64(4) of the LTA clearly implies that the CLP continues to apply as a statute of general application. The implication can also be found in s 55(4) of the LTA. Secondly, if the CLP or any of its provisions were inconsistent with the LTA, they would have been repealed by virtue of s 3(1) of the LTA and therefore s 64(4) would have been unnecessary. Section 3(1) provides as follows:

> Except as hereinafter provided, all Acts, regulations, rules, and other laws, and all practices, relating to estates and interests in land and operative at the commencement of this Act, so far as they are inconsistent with the provisions of this Act in their application to registered land, are hereby repealed.

Sections 3(1) and 64(4) of the LTA are to be contrasted with s 3(3) of the same Act which specifically provides that the Registration of Deeds Act shall not apply to registered land except as otherwise expressly provided in the LTA. Thirdly, s 64 of the LTA is, in my view, merely a drafting device to grant to mortgagees of registered land the same statutory powers which were available to mortgagees of non-registered land. The said powers could have been written in directly but the draftsman must have found it more convenient to do so by incorporating Part IV of the CLP with the necessary consequential amendments. Without such consequential amendments, s 24 of the CLP by its terms could not have been applicable to mortgages of registered land as they are not made by deed. Section 24 of the CLP is only applicable to mortgages *made* by deed.

In my view, the incorporation by reference of Part IV of the CLP as part of the LTA does not imply that the provisions of Part IV are inconsistent with the LTA; nor does such incorporation affect its separate existence as a statute of general application except to the extent that it is inconsistent with the LTA in regard to registered land. I do not find any such inconsistency between Part IV of the LPA and the Torrens system of registration in so far as it also recognises the existence of equitable mortgages of registered land de hors the system.

Since the LTA has nothing to say in relation to unregistrable mortgages of registered land except that it provides a means of protecting such interests by caveats, the question of whether such mortgagees have the statutory powers of mortgagees of non-registered land is left to the general law to determine. In my view, s 24 of the CLP confers on any mortgagee, whose mortgage is made by deed, a statutory power of sale exercisable in the manner provided in s 25. The defendants' mortgage is made by deed.

For the above reasons, I rejected this further argument and confirmed my previous decision.

Order accordingly.

Solicitors: *Wong Yoong Tan & Molly Lim*; *Manjit Darshan & Partners.*

Reported by *Ng Sheau Jiuan*